

**Statement of
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Before the**

**Water, Power, and Oceans Subcommittee
Committee on Natural Resources
U.S. House of Representatives**

**HR 4419 (Rep. Newhouse), the Bureau of Reclamation and Bureau of Indian Affairs Water
Project Streamlining Act
November 30, 2017**

Chairman Lamborn, Ranking Member Huffman, and Members of the Subcommittee, my name is Alan Mikkelsen, and I am the Deputy Commissioner at the Bureau of Reclamation (Reclamation) at the Department of the Interior (Department or Interior). Thank you for the opportunity to present testimony on behalf of the Department regarding H.R. 4419, the Bureau of Reclamation and Bureau of Indian Affairs Water Project Streamlining Act, which aims to streamline the process of studying, planning, designing and constructing water projects in the arid West. While H.R. 4419 includes Bureau of Indian Affairs' projects in the streamlining provisions, I intend to focus on the Bureau of Reclamation's views on the bill. As the Bureau of Reclamation is committed to sound, efficient, and streamlined environmental review processes in order to avoid unnecessary construction delays and increased costs of water projects, the Department supports the goals of H.R. 4419.

Ongoing Streamlining Efforts

Before I discuss specific provisions of H.R. 4419, I would like to briefly summarize the Department's ongoing efforts to streamline the implementation of the National Environmental Policy Act (NEPA) under Secretarial Order 3355 and Executive Order 13807. The Department's streamlining process was considered as we prepared the Department's statement on the bill before the Subcommittee today, and the Department offers its views in consideration of the points of common interest between H.R. 4419 and Secretarial Order 3355 and Executive Order 13807.

The Department supports efforts to streamline and expedite, in a manner consistent with law, environmental reviews, and approvals for all infrastructure projects. Water projects in particular are an important component of our Nation's infrastructure that can create multiple benefits, including reliable water supplies, flood control, hydropower, and water quality improvements.

On August 15, 2017, President Trump signed Executive Order 13807 aimed at identifying and addressing inefficiencies in the environmental review and permitting process for infrastructure

projects, in order to curtail construction delays and increased costs, and expedite infrastructure benefits to our Nation's economy, society and environment. The Executive Order directs the Council on Environmental Quality (CEQ) to undertake a number of actions, including developing a list of actions it can take to enhance and modernize the federal environmental review and authorization process. On September 14, 2017, CEQ published a notice in the *Federal Register* announcing an initial list of actions it will take to enhance and modernize the Federal environmental review and authorization process for infrastructure projects. These include actions to develop a "One Federal Decision" framework for infrastructure project approval, improving the process for preparing efficient and timely environmental reviews under NEPA, and convening an inter-agency working group to review NEPA implementing regulations.

Following the release of Executive Order 13807, the Department released Secretarial Order 3355 to immediately take steps to streamline the environmental review process within the Department's offices and bureaus and implement Executive Order 13807. Secretarial Order 3355 requires bureaus within Interior to limit environmental impact statements (EIS) to 150 pages, or 300 pages for "unusually complex projects." The order suggests a "target" of one year for agencies to complete an EIS after issuing a notice of intent under the NEPA. The order directs the Deputy Secretary to identify impediments to efficient and effective NEPA reviews, best practices, and evaluate whether the Department should establish additional categorical exclusions or revise current ones. The order also requires Assistant Secretaries to identify potential impediments to efficient and effective reviews for infrastructure and develop actions plans to address impediments. In implementing Secretarial Order 3355, the Department aims to eliminate unnecessary detail and paperwork, and replace it with sound decision-making on an informed understanding of environmental consequences.

Existing review processes are more than adequate to identify projects that are not feasible. However, far too often the environmental review process, and concomitant litigation, is used to unnecessarily obstruct, delay, and increase the costs of well-justified, highly merited projects. Executive Order 13807 and Secretarial Order 3355 are intended to cut through this red tape and help advance these worthy projects. By focusing on factors we can control - reform and streamlining in the environmental review process - we can have a positive impact on the speed by which these projects are completed.

The Department notes that there are numerous factors that can slow down the progress of projects. These include identifying local cost-share partners and markets for water, risks associated with project geology, downstream impacts, and litigation over environmental review. Secretarial Order 3355 aims to move the Department away from a regulatory regime that too often results in the cost of preparing environmental review documentation surpassing the costs of a proposed project. Years and years of litigation and numerous rewrites of environmental review documentation does not benefit interested parties, and moves us away from a coordinated, predictable, and transparent approval process. H.R. 4419 in conjunction with the ongoing streamlining efforts by the Administration has the potential to minimize the role of litigation in infrastructure and natural resources decisions.

H.R. 4419 (Sections 2-7)

H.R. 4419 sets forth provisions governing feasibility studies for water projects initiated under Reclamation law, with an aim toward accelerating the approval of major infrastructure projects. A project study initiated after enactment of the bill must: (1) result in the completion of a final feasibility report within three years; (2) have a maximum federal cost of \$3 million; and (3) ensure that personnel from the local project area, region, and headquarters levels of the Bureau of Reclamation concurrently conduct the required review. The bill sets forth factors for extending timelines for complex projects.

The bill contains several other provisions of note, which require the Department to:

- annually prepare a list of all studies that do not have adequate funding for study completion;
- develop and implement a coordinated environmental review process for the development of such studies;
- identify early all federal, state, and local government agencies and Indian tribes that may have jurisdiction and that may be required to act, which the federal lead agency shall invite to become participating or cooperating agencies;
- issue guidance regarding the use of programmatic approaches to carry out the environmental review process; and
- establish an electronic database and issue reporting requirements to make publicly available the status and progress with respect to compliance with applicable NEPA requirements and other action required for a project study.

The bill sets forth responsibilities in the environmental review process, including a plan for coordinating public and agency participation; working with cooperating agencies to resolve issues that could delay process completion or result in the denial of any approval; and establishing, upon request, memoranda of agreement with the project sponsor, Indian tribes, and state and local governments to carry out the early coordination activities. Further, the bill requires a federal lead agency to serve in that capacity for the entirety of all non-federal projects that will be integrated into a larger system owned, operated, or administered by Reclamation. It directs Interior, upon determining that a project can be expedited by a non-federal sponsor and that there is a demonstrable federal interest in expediting the project, to advance it as a non-federal project; requires a federal jurisdictional agency to complete any required approval or decision for the environmental review process on an expeditious basis; and, as referenced below, provides for a reduction of funds for agencies that fail to render decisions by a specified deadline.

Under Sections 3 and 6 of the bill, Interior must develop and submit reports to Congress on topics such as the status of implementation and the costs and benefits of proposed project studies. The Department would also be required to report on any project study that was expedited under this bill. The Department would like to work with the Committee and bill sponsor to ensure Section 5(i)(5)(B)(i)(II) does not unintentionally impact other activities in Reclamation's budget,

foster litigation, or cause unforeseen delays by requiring financial penalties on federal agencies found out of compliance with the decision deadlines in H.R. 4419.

Some of the requirements in H.R. 4419 are already established in routine practice or agency regulations, and CEQ has developed guidance on use of programmatic reviews. To avoid duplication between current practice and desired goals, or inconsistencies with definitions, the Department looks forward to working with the Subcommittee to develop technical amendments to this bill to clarify duplicative and varying standards between current practice, and some of the changes being implemented pursuant to Secretarial Order 3355.

Project Authorizations

Section 8 of H.R. 4419 would authorize four Reclamation projects to be carried out in accordance with the feasibility reports listed in the chart. The legislation authorizes construction of Phase III of the Yakima River Basin Water Enhancement Project, Equus Beds Division of the Wichita Project, Musselshell-Judith Rural Water System, and the Shasta Lake Water Resources Investigation. My statement will speak to each of those projects separately.

In regards to the authorization of Phase III of the Yakima Basin Integrated Resource Management Plan (Integrated Plan), the Department remains an ongoing federal participant in this initiative, and continues to support the ongoing coordination with our State partners and all Basin interests to find solutions to the long-term imbalance between water supply and demand and provide ecosystem restoration in the Yakima Basin.

With regards to the Equus Beds Project, the Department reiterates its support for the City of Wichita's goals of conserving and improving water supplies. Specifically, the Equus Beds Aquifer Storage and Recovery Project would provide a safe and reliable water source to Wichita and the surrounding area, while protecting the water quality of the Equus Beds aquifer. Reclamation signed a Record of Decision on January 19, 2010, selecting the project as the preferred alternative.

In regards to the Musselshell-Judith Rural Water System, the Department reiterates its support for the goals of encouraging a vibrant rural economy and ensuring safe, reliable sources of drinking water in Montana and North Dakota. As we testified on June 14, 2017, the Department found the proposed project to be feasible, and met the broad criteria of the program.

With respect to the Shasta Lake Water Resources Investigation, surface water storage projects are an important component of our Nation's infrastructure that can create multiple benefits, including reliable water supplies, flood control, hydropower, and water quality improvements. In California, cost-effective surface water storage is a crucial component to addressing the growing demands on California water supplies. The Shasta Enlargement Final Feasibility Report and Environmental Impact Statement (EIS) was transmitted to Congress in July 2015. The EIS identified a preferred alternative (Comprehensive Plan 4A). Reclamation continues to look for stakeholder partners to engage with us in cost-sharing and advancing this project. If such

partners are identified, certain State and local issues are resolved, and Congress authorizes the project, then Reclamation is willing to work with those partners to advance the project.

Deauthorization of Inactive Reclamation Project and Programs (Section 9)

Section 9 would direct the Secretary of the Interior to compile a list of congressionally-authorized inactive Reclamation programs or projects that are no longer under active consideration for construction due to cost, lack of local support, feasibility, or other reasons. Second, this provision provides a mechanism for inactive projects to be deauthorized without the need for congressional action on project-by-project basis. The language mirrors provisions enacted in Section 6001 of the Water Resources Reform and Development Act (WRRDA) of 2014 (PL 113-121).

Reclamation recognizes the sponsors' interest in deauthorizing inactive Reclamation projects when projects lack local support and available funding, or are otherwise determined to be inactive or irrelevant. Reclamation believes Congress plays an important role in establishing appropriate guidance for the Department on matters under its jurisdiction. This includes Congressional direction as to whether or not to deauthorize projects Congress determines no longer remain viable.

Conclusion

In conclusion, Mr. Chairman, the Department of the Interior looks forward to working with this Subcommittee and our sister agencies to achieve the goals of this legislation. We applaud any consideration of streamlining and hope we can work in unison to identify other ways to reduce unnecessary and time-consuming analysis and its concomitant litigation.